

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI BENCH****Appeal No. 641/252/ND/2018****IN THE MATTER OF SECTION 252 OF THE COMPANIES ACT,
2013 (18 of 2013)****AND****IN THE MATTER OF:****K SQUARE INFRATECH AND INTERIORS PRIVATE LIMITED****And another****...APPELLANT****VERSUS****REGISTRAR OF COMPANIES****And another****...RESPONDENTS****Order Pronounced on: 08.10.2018****CORAM: DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Appellant:** Mr. Himanshu Harbola, Advocate**For the Respondent:** Ms. Kusum Yadav, Company Prosecutor
For Registrar of Companies

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For Income Tax

MEMO OF PARTIES**K Square Infratech And Interiors Private Limited****Registered Office at** A-19, Gali No.2

East Guru Angat Nagar,

New Delhi-110092

...Appellant No. 1**Mr. Krishan Kumar****Resident of** A-19, Gali No.2

East Guru Anand,

New Delhi-110092

...Appellant No. 2**Ms. Durga Rajora****Resident of** FF-17, Block-FF,

Laxmi Nagar,

Delhi-110092

...Appellant No. 3**Mr. Pawan Kumar Rajora,****Resident of** A-19,

East Guru Anand Nagar,

New Delhi-110092

...Appellant No. 4**VERSUS****Registrar of Companies,**

Ministry of Corporate Affairs,

4th Floor IFCI Tower,

61 Nehru Place,

New Delhi-110019

...Respondent No. 1

Commissioner of Income Tax

Ward no. 1(3),

C.R. Building, I.P. Estate,

New Delhi – 110002

...Respondent No. 2

ORDER

1. This appeal is filed by the company, M/s K Square Infratech And Interiors Private Limited (for brevity the 'Company'), through and along with its three Directors, under Section 252(1) of the Companies Act, 2013 (for brevity 'the Act') against the order of striking off the name of the company passed by the respondent under section 248 (1) of the Act read with Rule 7 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 published on 30.06.2017 vide notification no. ROC-DEL/248(5)/STK-7/2879 by Registrar of Companies, the respondent herein.
2. The company is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the

Registrar of Companies, NCT of Delhi and Haryana on 05.10.2011 having CIN U45204DL2011PTC225917.

3. The company is having registered office at A-19, Gali No.2, East Guru Angat Nagar, New Delhi-110092
4. Authorized share capital of the Company is Rs.10,00,000/- divided into 10,000 equity shares of Rs.10/- each and issued, subscribed and paid up share capital of the Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
5. The main objects of the company are:
 - i. To engage in infrastructure development, real state promoters, developers and project management association including civil, mechanical, electrical, and all other types erection, commissioning projects, project trading as well as consultants or execution of projects on turnkey basis for equipment of industrial, domestic and other purposes.

And other main objects.

6. As per the notice of non-compliance of provisions of the Companies Act, 2013 in respect to filing of annual returns and financial statements since incorporation, the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
7. The Appellant has submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.
8. The appellants have stated that no notice under section 248(1) of the Act in the form of STK-1 was received by the Company or any of the directors or any person on their behalf and hence not afforded any opportunity of being heard before striking of the name of the company.

9. However, without going into the controversy of the latches in following the due procedure of law by Registrar of Companies before the final act of striking off the name of the company from the register of companies maintained by Registrar of Companies, for non-filing of statutory documents by company for the relevant period, through publication of notice on 30.06.2017, the appellants have preferred to prove with documents and records that the company was in operation and doing business during the period of striking off the name of the company as a better remedy.
10. The Appellant has brought forward the following facts about it being in operation and functional during the period of striking off:
 - i. The copy of Bank Statement of company issued by Allahabad Bank, from 02.04.2016 to 01.09.2018, reflecting various transactions done by the company during the period of striking off and having closing balance of Rs. 67,164/-

- ii. The copies of financial statements of the company for the financial years from 31.03.2012 to 31.03.2017. The Balance Sheet as on 31.03.2017 reflects cash and cash equivalents of Rs. 3,67,157/- and Loss of Rs. 2,28,749/-
 - iii. The copies of Income Tax Returns filed for the assessment years 2016-17 & 2017-18. The tax paid for assessment year 2016-17 is NIL.
 - iv. The company has incurred employee benefit expense of Rs. 5,89,159/- for the financial year ending on 31.03.2017.
 - v. The copy of Form 26 AS for Tax Deducted at Source for the financial years 2011-12 to 2017-18 and total tax deducted is Rs. 32,102/- for the year 2016-17.
11. It is further submitted by the Appellants that the failure to file financial statements and annual returns with the Registrar of Companies, NCT of Delhi and Haryana was due to inadvertence on part of the management and due to lack of professional guidance and as such there was no wilful or

mala-fide motive behind non-filing of the Financial Statements and Annual returns.

12. The Registrar of Companies has stated that it has no objection if the name of the Company is restored on proving by the Company that it was carrying on business or was in operation and the Company be also directed to file financial statements up to date with appropriate filing and additional fees.
13. The Income Tax Department has submitted in its report that there is no outstanding demand against the Assessee and has no objection if the company is considered for revival.
14. The Section 252(3) contemplates that one of the three conditions are required to be satisfied before exercising jurisdiction to restore company to its original name on the register of the Registrar of Companies namely:
 - i. That the company at the time of its name was struck off was carrying on business.
 - ii. Or it was in operation

- iii. Or it is otherwise just that the name of the company be restored on the register.
15. The Appellant have submitted sufficient evidence that it has been in operation since incorporation and therefore could not be termed as defunct company. Thus, taking into consideration the provisions of Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that there is a running business as on the date when the name was struck off and also keeping in consideration that it is just to do so can restore the name of the Company in the Register and in the interest of all stakeholders including the Appellant itself who seeks restoration of the name of the Company in the register maintained by Registrar of Companies, the company deserved to be restored.
16. Accordingly, this appeal is allowed. The Public Notice of Registrar of Companies striking the name of the company is set aside. The restoration of the company's name to the

Register of Registrar of Companies is ordered subject to its filing of all outstanding documents with proper filing fees along with additional fees required under law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns, and also subject to payment of cost of Rs. 25,000/- to be paid to Prime Minister's Relief Fund. The name of the Appellant Company shall then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off in accordance with Section 248(1) of the Companies Act, 2013.

17. The appeal is disposed of accordingly.
18. Let the copy of the order be served to the parties.

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)